

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

DEJWANN SIMMS,

Plaintiff,

v.

EDWARDS,

Defendant.

No. 1:22-cv-00028-JLT-BAM (PC)

ORDER CONSTRUING PLAINTIFF'S
MOTION TO SUBSTITUTE THE IDENTITY
OF DEFENDANT CORRECTION OFFICER
#1 AS OBJECTIONS TO FINDINGS AND
RECOMMENDATIONS
(Doc. 27)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS TO DISMISS
DEFENDANT CORRECTION OFFICER #1
FROM ACTION WITHOUT PREJUDICE
(Doc. 26)

This action proceeds against Defendant Edwards and Correction Officer #1 for deliberate indifference to medical needs and for failure to protect, in violation of the Eighth Amendment, related to the events surrounding Plaintiff's transport back to North Kern State Prison on October 16, 2020.

On March 9, 2022, the assigned Magistrate Judge directed Plaintiff to file a motion to substitute the identity of Defendant Correction Officer #1 that provided the Court with enough information to locate them for service of process. (Doc. 11.) Following an extension of time, the Court warned Plaintiff that if he failed to comply with the Court's order, the Court would dismiss the unidentified defendant from this action, without prejudice, for failure to serve with process pursuant to Federal Rule of Civil Procedure 4(m). (Doc. 23.) Following Plaintiff's failure to file

1 a motion to substitute the identity of Defendant Correction Officer #1, on July 27, 2022, the
2 Magistrate Judge issued findings and recommendations to dismiss Correction Officer #1 from this
3 action, without prejudice. (Doc. 26.) The Court served the findings and recommendations on
4 Plaintiff and notified him that any objections had to be filed within 14 days. (*Id.* at 3.)

5 On August 22, 2022, Plaintiff filed a motion to substitute the identity of Defendant
6 Correction Officer #1. (Doc. 27.) In the filing, Plaintiff explains that he has submitted inmate
7 request forms to the watch office, the R&R assignment officer, R&R sergeant, and the R&R Lt.,
8 but is waiting on responses to his requests. As of the date of his filing, Plaintiff states he has been
9 unable to get responses from anyone, and he believes that the only way he will be able to obtain
10 information about the identity of Defendant Correction Officer #1 is through the discovery
11 process. (*Id.*)

12 As Plaintiff's filing does not contain any specific information that can be substituted for
13 the identity of Defendant Correction Officer #1, the Court construes the filing as Plaintiff's
14 objections to the pending findings and recommendations. Upon review of the objections, the
15 Court finds no basis warranting rejection of the Magistrate Judge's findings and
16 recommendations. As discussed in the findings and recommendations, Plaintiff was permitted
17 multiple opportunities to provide sufficient information to identify Defendant Correction Officer
18 #1, during which time Plaintiff could have submitted discovery requests to Defendant Edwards or
19 pursued other information requests to individuals who are not parties to this action. (*See* Doc. 26,
20 p. 2.) Though Plaintiff states that he has submitted information requests to various individuals
21 and offices to learn the identity of Defendant Correction Officer #1, Plaintiff does not state when
22 these requests were submitted, what specific information or documents he hopes to obtain from
23 those sources, or how the specific information requested will assist Plaintiff in identifying
24 Defendant Correction Officer #1 for service of process.

25 According to 28 U.S.C. § 636 (b)(1)(C), this Court has conducted a *de novo* review of the
26 case. Having carefully reviewed the entire file, including Plaintiff's objections, the Court
27 concludes that the Magistrate Judge's findings and recommendations are supported by the record
28 and by proper analysis. Thus,

- 1 1. Plaintiff's motion to substitute the identity of Defendant Correction Officer #1, (Doc. 27),
2 is construed as Plaintiff's objections to the July 27, 2022 findings and recommendations.
- 3 2. The findings and recommendations issued on July 27, 2022, (Doc. 26), are **ADOPTED**
4 **IN FULL**.
- 5 3. Defendant Correction Officer #1 is **DISMISSED** from this action, without prejudice,
6 pursuant to Federal Rule of Civil Procedure 4(m).
- 7 4. This action shall proceed against Defendant Edwards for deliberate indifference to
8 medical needs and for failure to protect, in violation of the Eighth Amendment, for the
9 events surrounding the transport back to North Kern State Prison on October 16, 2020.
- 10 5. This matter is referred to the Magistrate Judge for further proceedings consistent with this
11 order.

12 IT IS SO ORDERED.

13
14 Dated: September 4, 2022


UNITED STATES DISTRICT JUDGE